THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Special Appeal No. 42 of 2006

1. Himmat Singh Rawat S/O Sri Sher Singh Rawat
2. Rajeev Gururani S/O Nanda Ballabh,
3. Mohammad Yusuf, S/o Mihammad Ali.
4. DevendraSah S/o Sri S.L. Sah.
5. Harish Chandra Pandey S/o Sri Devi Dutt Pandey.
6. Naveen Chandra Joshi S/o Sri Radha Ballabh Joshi.
   All are serving under the control of Chief Engineer Level (I) PW1 Uttaranchal, Yamuna Colony, Dehradun.

… Appellants.

Versus

1. Bhuwan Chandra Pandey S/o Sri Trilochan Pandey, R/o 1/13-A Ashirwad Enclave, Dehradun.
2. Rajeev Sharma S/o Sri Radhey Shyam Sharma R/o 1, Chitrakoot Enclave, Kanwali Road, Baliwala, Kanwali, Dehradun at present posted as Junior Engineer, Construction Division, P.W.D. Dehradun.
3. Mahipal Singh Negi S/o Late Sri C.S. Negi, R/o 8/10, Ashirwad Enclave, Dehradun,
4. Suraj Mani Malasi S/o Late Sri Tota Ram Malasi, R/o Office Campus of E.E, Construction Division, Srinagar, Garhwal.
5. Padmendra Singh Barthwal, S/o Sri B.S. Barthwal, R/o Shanti Villa, Shatabdi Enclave, Mussorie Bypass, Dehradun.
6. Kuldeep Kumar S/o Sri Sant Prakash, R/o Office of Executive Engineer, Ramnagar Construction Division, Ramnagar
7. C.S. Kanyal S/o Sri Bishan Singh Kanyal, posted as Junior Engineer Provincial Division P.W.D. Dehradun.
   And 148 others. … **Respondents.**

Sri Alok Singh learned Sr.Adv. assisted by Sri Prabhakar Joshi Adv. , learned counsel for the appellant.
Sri K.P.Upadhyay, Learned Standing for the State of Uttaranchal-respondent.
Sri M.C. Pant learned counsel for the contesting respondent nos. 1-7.

Coram: Hon'ble P.C.Verma, J.
Hon'ble B.S.Verma, J.

Dated July 12, 2006.

Heard learned counsel for the rival parties and perused the entire material on record.

This Special Appeal has been filed against the interim order dated 23.6.2006 passed by the learned Single Judge in Writ Petition No. On the Stay Application bearing CLMA No. 6686 of 2006 the following averment were made:-

"1.That in view of the facts and circumstances stated in accompanying petition it is expedient that this Hon'ble Court may graciously be pleased to stay the operation and effect of impugned order dated 2-5-2006 and order dated 6-3-97 (Annexure 217) and seniority list dated 19-2-94 and 9-4-02 passed by the respondents contained in the Annexure 14 & 126 to this writ petition, so far as the placement of the private respondents above the petitioners by declaring the same illegal and dehors the rules.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to stay the operation and effect of impugned order dated 2-5-2006 and order dated 6-3-97 passed by the respondents contained in the Annexure 14 & 16 to this writ petition, so far as the placement of the private respondents above the petitioners by declaring the same illegal and de-hors the rules."

On the above application the impugned order dated 23-06-2006 was passed to the effect that the respondent Nos. 1 and 2 are directed to keep 7 posts of Assistant Engineers reserved till the final decision of this writ petition.

The Special Appeal has been filed under Rule 5 of Chapter VIII of the High Court Rules, which reads as under:-

"5. **"Special appeal-** An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a court subject to the superintendence of the Court and not being an

order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction (or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any or the matter enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise or appellate or revisional jurisdiction under any such Act of one Judge).”

A perusal of this provision shows that special appeal can be filed against the order made by the Court. The word ‘order’ used in Rule 5 aforesaid means an order finally adjudicating a point by that order and not an order by which an interim mandamus is issued by the Court. The Division Bench of the Allahabad High Court in the case of ***“State of U.P. and others Vs. Kumari Renu Tiwari and 29 others” [(1993) 2UPLBEC, Page 1325],*** while dealing with the words “order” and “judgment” used in Rule 5 of Chapter 8 of the High Court Rules has observed in paragraph No.11 with reference to the case of ***Shah Babulal Khimji V. Jayaban D.Kania and another (AIR 1981 Supreme Court, 1786)*** as under:-

“11. In paragraph 119 at page 1817 their Lordships have laid down the following tests for determining whether an interlocutory adjudication amounts to ‘judgment’ or not. The tests are as follows:

“(1) That the trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. The courts must give sufficient allowance to the trial Judge

and raised a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings."

The propositions deducible from the above authorities are (1) when the term "judgment" is used in a Statute or rule linked with the term "decree" as defined in the Code of Civil Procedure, it will have a restricted and narrow meaning but when it is not so linked, it will have a wider connotation; (2) ordinarily for an ajducication to be a 'judgment' it should bring about termination of the proceeding in which the adjudication is made; and (3) an order passed on an application for interim relief is ordinarily not a 'judgment' but it will qualify to be called 'judgment' if it affects valuable right to the prty or decides an important aspect of the trial and the effect of the order on the party concerned is direct and immediate rather thatn indirect and remote."

Learned counsel for the appellants, therefore, submitted that the order quoted above does not decide any lis and does not all within the meaning of 'judgment' or 'order'. On the other hand, the interest of the appellants has been protected only by getting seven posts equal to the number of the writ petitioners to be reserved, so that their interest may not be jeopardized and the posts may be filed up after the disposal of the impugned Writ Petition.

Learned counsel for the appellants also submitted that since an interim application has been disposed of, therefore, it amounts to final adjudication of the interim relief, therefore, the order in question is appealable.

The order under challenge goes to show that no lis has been decided, rather only the interest of the petitioner-respondent nos. 1 to 7 has been protected by getting seven posts reserved and the application has been disposed of. Nothing has been said regarding selection for the rest of the posts. Consequentially no substantial relief has been granted to the petitioner-respondent in the said Writ Petition, by which the respondent-appellants (in the appeal) can be said to be aggrieved person. Since we have held that the order does

not decide any lis, therefore, the order does not fall within the meaning of ‘order’, ‘decree’ or ‘judgment’ referred to in Rule 5 of Chapter VIII aforesaid. Therefore, the appeal is not maintainable.

The appeal is dismissed accordingly with no order as to costs.

Learned counsel for the appellants invited our attention that the matter under challenge in the impugned writ petition relates to the promotion of Assistant Engineer, therefore, the post of Assistant Engineer being gazette, the case is cognizable by the Division Bench. Learned counsel for the appellants further made a request that since the matter at hand relates to Division Bench of service matters of the Court, the writ petition may be posted for day after tomorrow, i.e. 14-7-2006 for final adjudication of the writ petition.

The Registry is directed to post the Writ Petition No. 630 of 2006 (S/S) for 14.7.2006 for final hearing.

(B.S.Verma, J.) **(P.C.Verma, J.)**

RCP